

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

3 UNITED STATES OF AMERICA,) Case No. 4:22CR3154
4 Plaintiff,)
5 vs.)
6 SCOTT A. BERNDT,) Videoconference
7 Defendant.) April 17, 2023

TRANSCRIPT OF PLEA PROCEEDINGS
BEFORE THE HONORABLE CHERYL R. ZWART
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: Mr. John J. Schoettle
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FOR THE DEFENDANT: Mr. Tregg Lunn
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25 Proceedings recorded by digital recording, transcript produced
by certified stenographer.

1 (At 2:24 p.m. on April 17, 2023; with counsel and the
2 defendant present:)

3 THE COURT: We're on the record in Case No.
4 4:22CR3154. This is the United States of America versus
5 Scott A. Berndt.

6 Counsel, please enter your appearance.

7 MR. SCHOETTLE: Your Honor, John Schoettle on behalf
8 of the United States government.

9 MR. LUNN: Good afternoon, Your Honor. Tregg Lunn
10 for Mr. Berndt, who appears in custody via Zoom from the Saline
11 County Jail.

12 THE COURT: All right. Mr. Berndt, you're here today
13 because I've been told that you want to enter a plea of guilty.
14 Is that true?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: I need to explain to you, sir, that I am
17 not your sentencing judge and I'm not the judge who will
18 determine whether your guilty plea is accepted and whether your
19 plea agreement is accepted. Those matters will be taken up by
20 Judge Gerrard who is your sentencing judge. But what I can do
21 for you today is gather some information from you and make a
22 recommendation to Judge Gerrard on those issues.

23 Do you agree to proceed before me?

24 THE DEFENDANT: Yes, ma'am.

25 (The defendant was sworn.)

1 THE COURT: You are now under oath. You've sworn to
2 tell the truth, which means if you lie during this proceeding
3 you can be separately prosecuted for the crime of perjury. Do
4 you understand?

5 THE DEFENDANT: I do.

6 THE COURT: At this time I'm going to have the
7 government explain to you again the charge to which you intend
8 to plead guilty and the possible penalty for that charge.

9 Mr. Schoettle.

10 MR. SCHOETTLE: Mr. Berndt, you're pleading guilty to
11 Count I of the Indictment and that alleges in substance that
12 beginning on or about November 1st, 2020, continuing to on or
13 about December 18th, 2021, in Nebraska, you, along with Louise
14 Gina Polyansky and Rebecca Frankenstein, knowingly and
15 intentionally combined, conspired, confederated, and agreed,
16 together and with other persons, to distribute and possess with
17 the intent to distribute 500 grams or more of a mixture or
18 substance containing methamphetamine. That's in violation of
19 Title 21, United States Code, Sections 841(a)(1) and (b)(1).

20 It further alleges that before you committed the offense
21 charged, you had a final conviction for a serious drug felony,
22 namely, a conviction for Robbery in violation of Nebraska
23 Revised Statutes Section 28-324 in the District Court for
24 Lancaster County, Nebraska, for which you served more than 12
25 months in prison.

1 If convicted, you face a minimum term of imprisonment of
2 15 years up to life. Following any term of imprisonment,
3 you'll be placed on supervised release for at least ten years
4 and up to life. You'd have to pay a \$100 special assessment,
5 and you could be fined up to \$20 million.

6 THE COURT: Sir, do you understand both the charges
7 and the possible penalties?

8 THE DEFENDANT: I do.

9 THE COURT: Having heard that information, again, is
10 it still your intent to plead guilty?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: I have in front of me a Petition to Enter
13 a Plea of Guilty and a Plea Agreement, both of which appear to
14 have been signed by you. Did you go over these documents with
15 your attorney?

16 THE DEFENDANT: I did.

17 THE COURT: Going to the petition, it has several
18 questions and answers in it. Did you answer each of those
19 questions truthfully?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Were your answers recorded correctly?

22 THE DEFENDANT: They were.

23 THE COURT: And after going through the document, did
24 you sign it?

25 THE DEFENDANT: I did.

1 THE COURT: Going to the Plea Agreement, did you read
2 it?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Did your attorney explain it to you?

5 THE DEFENDANT: He did.

6 THE COURT: Was there any questions about its meaning
7 that he was unable to answer?

8 THE DEFENDANT: No -- no.

9 THE COURT: And after going through the document, did
10 you sign it?

11 THE DEFENDANT: I did.

12 THE COURT: When you went over these documents, were
13 you under the influence of drugs or alcohol or having any
14 difficulty thinking?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Are you under the influence of anything
17 right now?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Has anybody threatened you in any way to
20 get you to plead guilty?

21 THE DEFENDANT: No.

22 THE COURT: Has anybody promised you anything other
23 than the promises in the Plea Agreement to get you to plead
24 guilty?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Are you having any difficulty hearing,
2 understanding, and answering my questions?

3 THE DEFENDANT: I'm not.

4 THE COURT: Do you understand that if the Court
5 accepts your plea of guilty, you will be found guilty of a
6 felony?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand you have the right to
9 plead not guilty and make the government try to prove this case
10 at trial?

11 THE DEFENDANT: I do.

12 THE COURT: Do you understand you are giving up your
13 trial rights by pleading guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: You've been represented in this case by
16 Mr. Lunn. Is that correct?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you believe that he has investigated
19 this case sufficiently so that you know what to do today?

20 THE DEFENDANT: I do.

21 THE COURT: Are you satisfied with his
22 representation?

23 THE DEFENDANT: I am.

24 THE COURT: Do you understand that if you chose to go
25 to trial, you would have the right to counsel representation at

1 the trial at no cost to you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand you would have a jury
4 trial?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that at that trial you
7 would have the right to see and hear the witnesses who testify
8 against you and to have them cross-examined on your behalf?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you understand you would have the
11 right to call witnesses for you and if they would not come
12 voluntarily you could get a court order, called a subpoena, to
13 make them come and testify?

14 THE DEFENDANT: I do.

15 THE COURT: Do you understand that if you chose to go
16 to trial, you could testify yourself if you wanted to or you
17 could stay silent?

18 THE DEFENDANT: I do.

19 THE COURT: Do you understand that if you stayed
20 silent at the trial, the jury would not be allowed to consider
21 that silence in deciding whether you were guilty?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand that if you chose
24 to go to trial, the government would not get a conviction
25 against you unless it was able to prove to every single juror

1 that you are guilty beyond a reasonable doubt?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Are you willing to give up all of those
4 trial rights and plead guilty in this case instead?

5 THE DEFENDANT: I am.

6 THE COURT: With a guilty plea, you will have a
7 felony record and with that felony record comes a loss of civil
8 rights. Those rights include the right to vote, the right to
9 serve in a jury, the right to hold a public office, the right
10 to carry a weapon. You can also lose federal benefits, but you
11 will lose rights. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And knowing that you will lose civil
14 rights, are you willing to plead guilty?

15 THE DEFENDANT: I am.

16 THE COURT: You're looking at a sentence in this case
17 of a minimum of 15 years and up to life in prison; a possible
18 fine of up to \$20 million could be imposed in addition to any
19 term of imprisonment; supervised release of at least ten years
20 and up to a lifetime; and a \$100 mandatory special assessment.

21 Is that what you're looking at?

22 THE DEFENDANT: Yes.

23 THE COURT: Has Mr. Lunn explained the sentencing
24 guidelines to you?

25 THE DEFENDANT: He has.

1 THE COURT: Has he explained that those guidelines
2 provide the starting point that Judge Gerrard will look at in
3 determining what your sentence ought to be?

4 THE DEFENDANT: He did.

5 THE COURT: Do you understand that Judge Gerrard will
6 consider all of your relevant conduct when determining your
7 sentence?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: For example, he is going to consider such
10 things as how much drugs were involved, whether guns were
11 involved in the distribution of drugs, whether you played a
12 leadership or managerial role in drug distribution, whether
13 guns were involved in the distribution of drugs, any criminal
14 history you may have, and the types of crimes reflected in that
15 history, those types of things. Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: And once Judge Gerrard considers all of
18 your relevant conduct and makes his findings, he may sentence
19 you within the guidelines you've discussed with your attorney
20 but he may choose not to. He may go above or below those
21 guidelines based upon his findings. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And once Judge Gerrard determines how
24 much time you'll spend in prison, do you understand you will be
25 required to serve all of that time and the most you can get off

1 that sentence is 54 days per year for good time served and
2 that's only if you earn good time? Do you understand?

3 THE DEFENDANT: I do.

4 THE COURT: Now, after you get done serving your time
5 in prison, your sentence will not be over. You will be
6 required to serve what is called supervised release as part of
7 your sentence.

8 I need to make sure you understand what that is.

9 At the time of sentencing, Judge Gerrard is going to
10 include in your sentencing order a list of rules called
11 conditions of release that you must follow under court
12 supervision for a minimum of ten years after you get out of
13 prison.

14 Do you understand?

15 THE DEFENDANT: I do.

16 THE COURT: Do you understand that if you violate
17 those conditions of release, you can be brought back to court
18 and sent back to jail?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that if you violate the
21 conditions of release by committing another crime, your penalty
22 or sentence on the new crime could be greater than it otherwise
23 would have been merely because you were still serving a
24 sentence in this case when you committed yet another crime? Do
25 you understand that?

1 THE DEFENDANT: I do.

2 THE COURT: You will be required to pay the \$100
3 mandatory special assessment. Were you aware of that?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Schoettle, is there restitution in
6 this case?

7 MR. SCHOETTLE: No, Your Honor.

8 THE COURT: I'm sorry, I didn't hear you.

9 MR. SCHOETTLE: No, Your Honor.

10 THE COURT: All right. Sir, you have a plea
11 agreement with the government which outlines your agreement
12 regarding what should happen at the time of sentencing. Do you
13 understand that this agreement is between you and the
14 government and is not binding on Judge Gerrard?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: At this time I'm going to have the
17 government explain that plea agreement to you. Please listen
18 as Mr. Schoettle does that.

19 Mr. Schoettle.

20 MR. SCHOETTLE: These are the key provisions of the
21 plea agreement.

22 Under the plea agreement, Mr. Berndt agrees to plead
23 guilty to Count I of the Indictment, which I've explained
24 earlier.

25 In exchange for that plea of guilty, the United States

1 agrees that he will not be federally prosecuted in the District
2 of Nebraska for any drug trafficking crimes disclosed by the
3 discovery material provided to his attorney as of the date this
4 agreement was signed by all the parties.

5 Agreement not to prosecute him for specific crimes does
6 not prevent any prosecuting authorities from prosecuting him
7 for any other crime, or for any crime involving physical injury
8 or death.

9 The Plea Agreement lists the elements of the offense and a
10 factual basis that the parties agree is true and undisputed.

11 Plea Agreement also lists the penalties and specifies that
12 it's limited to the United States Attorney's Office for the
13 District of Nebraska.

14 The parties have the following sentencing agreements:

15 First, the parties agree that Mr. Berndt should be held
16 responsible, beyond a reasonable doubt, for at least 5
17 kilograms but less than 15 kilograms of methamphetamine
18 mixture.

19 Parties further agree that Mr. Berndt is found to be
20 entitled to an offense level reduction under the guidelines for
21 acceptance of responsibility, United States moves that the
22 Court reduce his offense level by an additional level under the
23 guidelines.

24 Under the agreement, the parties agree that Mr. Berndt may
25 not request or recommend additional downward adjustments,

1 departures, and sentence reductions, and that the United States
2 will oppose any such request.

3 Parties have no agreement concerning Mr. Berndt's criminal
4 history category except that if he's determined to be a career
5 offender, parties agree that he's automatically a criminal
6 history category VI under the guidelines.

7 Parties will recommend that Mr. Berndt be sentenced to the
8 low end of the advisory guideline range calculated by the
9 United States under this agreement.

10 Finally, this agreement contains an appeal waiver and a
11 collateral attack waiver. Under the appeal waiver, Mr. Berndt
12 knowingly and expressly waives any and all right to appeal his
13 conviction and sentence, unless he's claiming ineffective
14 assistance of counsel.

15 Under the collateral attack waiver, Mr. Berndt knowingly
16 and expressly waives any and all rights to contest his
17 conviction and sentence in any postconviction proceedings,
18 unless he's either timely challenging his conviction and
19 sentence should the Eighth Circuit or the Supreme Court later
20 find that the charge he's agreeing to plead guilty to fails to
21 state a crime, or if he's seeking postconviction relief based
22 on ineffective assistance of counsel.

23 Those are the key provisions of the plea agreement,
24 Your Honor.

25 THE COURT: Mr. Lunn, do you agree?

1 MR. LUNN: I do, Your Honor.

2 THE COURT: Mr. Berndt, did you listen as the
3 government described the plea agreement?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Did that description match your
6 understanding of your agreement with the government?

7 THE DEFENDANT: Yes, it did.

8 THE COURT: Under the terms of the plea agreement,
9 you're giving up your right to appeal and to collateral attack
10 with certain exceptions. I need to make sure you understand
11 what you're giving up. Everything that's done by this Court is
12 subject to being looked at by another court to make sure it was
13 done right. The process is called an appeal and the Court that
14 looks at it is the Eighth Circuit Court of Appeals.

15 Do you understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Under the terms of this plea agreement,
18 you're giving up your right to that appeal process with two
19 exceptions. You can claim that Mr. Lunn provided you with
20 ineffective assistance of counsel and you can request
21 compassionate release and appeal the denial of any such
22 request; but in all other respects, you are giving up your
23 right to appeal.

24 Do you understand?

25 THE DEFENDANT: I do.

1 THE COURT: Collateral attack is different than an
2 appeal. It's a proceeding that you can file after all of the
3 appeal process is over and you can allege in that proceeding
4 that your constitutional rights were violated.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Under the terms of this plea agreement,
8 you're giving up your right to that type of proceeding as well,
9 again, with two exceptions. You can claim you had ineffective
10 assistance of counsel and you can claim that what you're
11 admitting to here today is not a crime. But in all other
12 respects, you are giving up your right to collateral attack.

13 Do you understand?

14 THE DEFENDANT: I do.

15 THE COURT: Do you understand that your waiver of
16 appeal and your waiver of collateral attack apply both to your
17 conviction and to the sentence you have not yet received?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you talked to your attorney about
20 your appeal rights and your collateral attack rights?

21 THE DEFENDANT: Yeah, we have.

22 THE COURT: After having those discussions and
23 considering your options, have you decided to give up your
24 right to appeal and to collateral attack with the exceptions
25 listed in the plea agreement?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Has anybody made any promises to you that
3 are not in the written plea agreement?

4 THE DEFENDANT: No.

5 THE COURT: Do you understand there is no guarantee
6 your sentence will be less because you pled guilty instead of
7 being found guilty by a jury?

8 THE DEFENDANT: I do.

9 THE COURT: At this time I'm going to have
10 Mr. Schoettle explain the key facts the government would
11 present at trial if this case went to trial. Please listen as
12 he does that.

13 Mr. Schoettle.

14 MR. SCHOETTLE: Yes. The government anticipates
15 presenting evidence of the following facts:

16 Starting around November 2020, Scott A. Berndt agreed and
17 worked with several others to obtain and distribute
18 methamphetamine in the Lincoln, Nebraska, area.

19 In about November of that year until May 2021, Berndt and
20 others received packages by mail containing pound to multipound
21 quantities of methamphetamine that had been shipped to a couple
22 different locations in Lincoln.

23 U.S. postal records show during this time period over ten
24 suspected drug packages weighing between 1.69 pounds to over 11
25 pounds being delivered to these addresses from the November to

1 May 2021 time period.

2 During that time period and after, Mr. Berndt and others
3 distributed methamphetamine to others in the Lincoln area in
4 quantities ranging from a half ounce to a quarter pound at a
5 time.

6 According to money transfer records, on at least a few
7 occasions during this time period, Mr. Berndt sent the proceeds
8 from distributing that methamphetamine by wire to individuals
9 in Arizona.

10 And all these events happened in Nebraska.

11 Government further anticipates presenting evidence that
12 before November 1st of 2020, Mr. Berndt had a final conviction
13 for a serious violent felony, a conviction for robbery in
14 violation of Nebraska law in the District Court for Lancaster
15 County, Nebraska, and he served more than 12 months in prison
16 for that offense.

17 THE COURT: All right. Mr. Lunn, do you believe that
18 if this case went to trial that evidence would go before a
19 jury?

20 MR. LUNN: I do believe that, Your Honor.

21 THE COURT: All right. Mr. Berndt, did you listen as
22 the government described the evidence against you?

23 THE DEFENDANT: I did.

24 THE COURT: Is everything that Mr. Schoettle said the
25 truth?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Between November of 2020 and December of
3 2021, were you in Nebraska?

4 THE DEFENDANT: I was.

5 THE COURT: Were you, along with others, buying and
6 selling methamphetamine?

7 THE DEFENDANT: I did.

8 THE COURT: Were you working along with Louise Jean
9 Polyansky and Rebecca Frankenstein?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Were you buying and selling over a period
12 of time?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Over that period of time, do you agree
15 that you distributed and possessed with the intent to
16 distribute 500 grams or more of a mixture or substance
17 containing a detectable amount of methamphetamine?

18 THE DEFENDANT: I do.

19 THE COURT: Did you know that what you were buying
20 and selling was, in fact, methamphetamine?

21 THE DEFENDANT: I do -- I did.

22 THE COURT: Prior to November 1st of 2020, had you
23 been convicted of a serious violent felony, specifically,
24 Robbery?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Did you serve a term of imprisonment of
2 12 months or more for that crime?

3 THE DEFENDANT: I did.

4 THE COURT: Were you released from that imprisonment
5 less than 15 years prior to November 1st of 2020?

6 THE DEFENDANT: No. I was released in 1997.

7 THE COURT: Okay, hang on a second.

8 So it doesn't in this one -- okay, Mr. Schoettle, in this
9 one he doesn't -- it just is any violent felony, irrespective
10 of the time frame?

11 MR. SCHOETTLE: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. SCHOETTLE: So there are -- under the statute,
14 there are two possible categories of felonies that could serve
15 as a 851. The first is a serious drug felony, which requires
16 that the defendant serve more than 12 months in prison and be
17 released within 15 years.

18 THE COURT: Got it.

19 MR. SCHOETTLE: The other option is a serious violent
20 felony, which applies in this case.

21 THE COURT: Got it. All right.

22 MR. LUNN: Your Honor, we --

23 THE COURT: Go ahead.

24 MR. LUNN: Mr. Berndt and I talked specifically about
25 this.

1 THE COURT: All right. Any further questions I need
2 to ask, Mr. Schoettle?

3 MR. SCHOETTLE: No, Your Honor.

4 THE COURT: Mr. Lunn?

5 MR. LUNN: No, Your Honor. Thank you.

6 THE COURT: Mr. Schoettle, do you believe the guilty
7 plea is knowing, intelligent, and voluntary, and that there is
8 a factual basis for it?

9 MR. SCHOETTLE: I do, Your Honor.

10 THE COURT: Mr. Lunn, do you agree?

11 MR. LUNN: I do.

12 THE COURT: Mr. Berndt, do you want the Court to
13 accept your plea of guilty?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you have any questions of me before I
16 proceed?

17 THE DEFENDANT: I do not.

18 THE COURT: You have been charged in the Indictment
19 which alleges that beginning on or about November 1st of 2020
20 and continuing to on or about December 18th of 2021, while in
21 Nebraska, you along with others did knowingly and intentionally
22 combine, conspire, confederate, and agree with other persons to
23 distribute and possess with the intent to distribute 500 grams
24 of a mixture or substance containing a detectable amount of
25 methamphetamine, and that you did so after being previously

1 convicted of a serious violent felony, specifically, Robbery,
2 for which you served 12 months of imprisonment or more. What
3 do you plead?

4 THE DEFENDANT: Guilty.

5 THE COURT: I do find that your guilty plea is
6 knowing, intelligent, and voluntary and that there is a factual
7 basis for it.

8 I will recommend to Judge Gerrard that he accept your plea
9 of guilty and your plea agreement. He'll take up the issue of
10 your plea agreement at sentencing on July 21st at 9:30.

11 Does that work for everyone?

12 MR. SCHOETTLE: That should work.

13 MR. LUNN: Yes, Your Honor.

14 THE COURT: All right. Anything else we need to take
15 up at this time?

16 MR. SCHOETTLE: No, Your Honor.

17 MR. LUNN: No, thank you.

18 THE COURT: All right. We are in recess.

19 (Recess at 2:45 p.m.)

20 * * *

21 C-E-R-T-I-F-I-C-A-T-I-O-N

22 I, Susan M. DeVetter, RDR, CRR, certify that the foregoing
23 is a correct transcript to the best of my ability from the
24 digital recording of the proceedings held in the above-entitled
25 matter.

24 _____*/s/ Susan M. DeVetter*_____
25 Transcriber

_____*May 3, 2023*_____
Date